

## **REMARKS**

Reconsideration and withdrawal of the examiner's rejections under 35 USC §§ 112, 102 and 103, and obviousness type double patenting rejections is respectfully requested in view of the above amendments and the following remarks. The applicant would like to thank the examiner for her time and kind cooperation in this matter.

### **Election of Species**

Applicant hereby withdraws their prior traversal of the restriction and election of species requirement.

### **35 USC § 112**

The examiner has rejected claims 1-15 and 18 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement with respect to new matter.

In response, applicants have amended claim 1 to replace "25°C" with the limitation that the reaction occurs during use by a user of the inventive cleansing product for skin cleansing and treatment. Support for this amendment is found in the instant specification on page 2, lines 24-25.

### **35 USC § 102**

Claims 1-4, 7, 10-11 and 13 stand rejected under 35 U.S.C. 102(b) as being anticipated by Schmitt (3,866,800). In response, applicants have amended claim 1 to limit the claimed dispersed phase stabilizer to an organophilic particle in order to distinguish the instant invention from Schmitt.

Schmitt discloses a non-pressurized package containing a product comprising two separate compositions which are adapted to be mixed together to form a final heated composition which is dispensed from said package, said package having two separate

compartments for separate storage of said two compositions, one of said compartments containing a composition comprising an oxidant in an aqueous medium, and the other of said compartments containing a substantially anhydrous composition which includes a reductant, a water-soluble organic solvent, and a compressible gas which is substantially water-insoluble but which is soluble in said organic solvent. Schmitt also discloses that the anhydrous B compositions may also contain thickening agents (col. 5, line 19). Applicants respectfully submit that amended independent claim 1 is both novel and unobvious in view of Schmitt since Schmitt does not disclose or suggest an organophilic particle stabilizer contained in the dispersed phase and where the continuous phase is composed of a substantially anhydrous carrier. For this reason, a proper prima facie case under § 102 is not made out by Schmitt.

Claims 1, 12-13, 15 and 18 stand rejected under 35 U.S.C. 102(b) as being anticipated by Murphy (US 5,585,093).

In response, applicants have amended claim 1 to require a second chamber with a specifically defined second component to clearly distinguish the instant invention from Murphy.

Murphy discloses a deodorant and antiperspirant-deodorant cosmetic stick and roll-on products with an organic matrix having a dispersed particle phase of an encapsulated bicarbonate salt ingredient such as sodium bicarbonate. The particle surfaces are coated with a polymer such as maltodextrin starch. The encapsulated bicarbonate salt ingredient is in the form of crystallites which have a content of a liquid fragrance adsorbed on the crystallite surfaces. Murphy seeks to protect the bicarbonate salt particle by physically shielding with a polymer encapsulating material. The skilled person following the teaching of Murphy would therefore be led to produce a composition with a three phase structure i.e., dispersed particles (phase 1) surrounded by a polymer capsule (phase 2) where the encapsulated particles are dispersed or suspended in a liquid, semi-solid or solid organic matrix (phase 3). See col.4, lines 24-36. Moreover, it is respectfully submitted therefore that Murphy fails to anticipate or suggest the inventive two phase composition or disclose or suggest the second chamber in amended claim 1. For this reason, a proper prima facie case under § 102 is not made out by Murphy.

Claims 1, 9-10 and 13-15 stand rejected under 35 U.S.C. 102(b) as being anticipated by Sine, et al. (US 6,183,766). In response, applicants respectfully submit that amended claim 1 is novel and unobvious in view of Sine, et al.

Sine, et al., discloses a skin sanitizing composition comprising an effective amount of a sanitizing agent to kill or reduce the growth of microorganisms, a lipophilic skin moisturizing agent, an effective amount of a degreasing agent selected from the group consisting of silicones, wax materials, powders, fluorochemicals and blends thereof, and optional components which include thickeners, humectants and perfumes, and finally water. Applicants respectfully submit that a prima facie case of anticipation under § 102 is not made out with respect to Sine, et al., because Sine does not disclose or suggest a composition having a dispersed phase including a first component which is capable of chemically reacting with a now required second component that is different from the first in an aqueous matrix as presently claimed.

### **35 USC § 103**

Claims 1-4, 7, 13 and 18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lentini, et al. (US 6,177,092). Applicants respectfully traverse this rejection.

Lentini, et al., relate to a self-foaming system having two components that are maintained in separate containers so that the components produce carbon dioxide when they commingle with each other upon being dispensed from their individual containers. Applicants respectfully submit that a proper prima facie case under § 103(a) has not been made out at least because the disclosure of Lentini, et al., fails to disclose a first component in a dispersed phase which is capable of chemically reacting with a second component in an aqueous matrix wherein the dispersed phase stabilizer is an organophilic particle.

Although Lentini, et al., discloses that compositions in different forms may be used such as solutions, dispersions, emulsions and suspensions (col. 6, lines 57-61) there is no teaching or suggestion as to what materials could be used to stabilize such dispersions absent undue experimentation. Moreover, Lentini, et al., emphasizes the use of either aqueous or non-aqueous solutions (i.e., not dispersions) as separate carriers for the bicarbonate and acid

components or sachets containing the components of the system without further definition of what the sachet components could be (see col. 3, lines 40-53).

In other words, the skilled person would conclude that the essential teachings of Lentini, et al., are either true solutions or solid components. In the context of § 103, the essential teaching of the reference is sought. By the same token, “[i]t is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” *In re Wesslau*, 353 F.2d 238, 241, 147 U.S.P.Q. 391, 393 (C.C.P.A. 1965); see also *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 448-49, 230 U.S.P.Q. 416, 420 (Fed. Cir. 1986) (holding that district court, by failing to consider a prior art reference in its entirety, ignored portions of the reference that led away from obviousness).

Claims 10-11 under 35 U.S.C. 103(a) stand rejected as being unpatentable over Lentini, et al. (US 6,177,092) in view of Gentile, et al. (US 6,161,729). Applicants respectfully traverse this rejection.

Gentile, et al., discloses a dual-chambered dispenser having a pair of elongated hollow tubes containing separate flowable material streams and a manifold directing the flow through separate chambers. Gentile, et al., fails to remedy the deficiencies of Lentini, et al., with respect to claims 10 and 11 which depend from amended claim 1. Therefore, it is respectfully submitted that a prima facie case of obviousness under § 103(a) has not been made out with respect to claims 10 and 11.

Claims 5-6 and 8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lentini, et al. (US 6,177,092) in view of Hall, et al. (US 5,316,054). Applicants respectfully traverse this rejection.

Hall, et al., relates to a self-contained package for housing, dispensing and diluting concentrated liquid with a predetermined quantity of dilution liquid prior to use. Applicants respectfully submit that a proper prima facie case of obviousness under § 103(a) has not been made out with respect to claims 5, 6 and 8 because claim 5, 6 and 8 either depend from or

ultimately depend from amended claim 1 and Hall, et al., fails to remedy the deficiencies of Lentini, et al., with respect to claim 1 and its dependent claims.

### **Obvious-Type Double Patenting**

Claims 1-15 and 18 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-1, 13 and 16-17 of copending Application No. 10/730,218 in view of Lentini, et al. (US 6,177,092).

In response, applicants respectfully assert that if a "provisional" double patent rejection becomes the only rejection remaining in the application, the examiner is respectfully requested to withdraw the rejection allowing the instant case to issue thereby converting the provisional double patenting rejection to a double patenting rejection for application no. 10/730,218 MPEP 804 (I)(B), 8<sup>th</sup> edition revision 3, October 2005.

### **CONCLUSION**

In summary, claims 1-3, 14 and 15 have been amended and claims 13 and 16 have been cancelled. No new matter has been added.

In light of the above remarks, applicants submit that the claims now pending in the present application are in condition for allowance. The examiner is invited to contact the undersigned if there are any questions concerning the case.

Respectfully submitted,



Alan A. Bornstein  
Registration No. 40,919  
Attorney for Applicant(s)

AAB/ss  
(201) 894-2180